IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL No.546 of 2001
(Old No.524 of 1992)

Anand Singh S/o Mangal Singh, R/o Vill. Bisaid
Patti Ghurdaursyun, Distt. Pauri Garhwal

..... Appellant

Versus

The State

.....Respondent

Dated: November 07, 2007

Sri M.C. Kandpal, Sr. Advocate assisted by Sri S.S. Chaudhary. Id. counsel for the appellant
Sri M.A. Khan, learned brief holder for the State

HON. DHARAM VEER, J.

This appeal, preferred by the appellant u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.),* is directed against the judgment and order dated 24.02.1992 passed by Sessions Judge, Pauri Garhwal in Sessions Trial No.35 of 1991, State v. Anand Singh, whereby the learned Sessions Judge has convicted the appellant under Section 324 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.)* and sentenced him for two years R.I.

2 In brief, the prosecution case is that in village-Bisald there was an organization named Mahila Mangal Dal, which started a programmed of prohibition of liquor in the village. Smt. Rameshwari Devi wife of Pratap Singh was head of the organization. The said organization got recovered liquor from the appellant-Anand Singh on 19.2.1991 and thereafter, the appellant had enmity against Rameshwari Devi and for the last 2-3 days before this occurrence, appellant was also abusing the members of the organization. On 9.3.1991 at about 10:00 P.M. appellant challenged the members of Mahila Mangal Dal that he is manufacturing the illicit liquor in his house and who has the courage to stop him. Upon this, Smt. Rameshwari Devi and other lady members of organization went towards the house of appellant Anand Singh. Appellant came on the road and caught hold of Rameshwari Devi and dragged her to his courtyard and with the intention to commit her murder, sprinkled kerosene oil upon her and set fire. On the cry raised by her and other ladies, Amar Singh and Hari Singh also reached on the spot. Then they along

with other ladies extinguished the fire of the body of Rameshwari Devi. The appellant threatened Rameshwari Devi and other for the dire consequences. A report of this occurrence was lodged by Mahavir Singh Negi on 10.3.1991 at 5:00 A.M. at Patti Patwari Ghurdaursyun-I, Distt. Pauri Garhwal, that report is Ex.Ka-1. On the basis of this report, a *Chik* FIR was prepared by Dinesh Chandra Pokhariya, Patwari Ghurdaursyun-I on 10.3.1991, i.e. Ex.Ka-2. The entry was also made in the G.D., the copy of G.D. is Ex.Ka-3. Injured Rameshwari Devi was also medically examined by In-charge Medical Officer, Primary Health Centre, Pavo on 10.3.1991 at 2:15 A.M. and an injury report was also prepared, i.e. Ex.Ka-8. During the course of the investigation, the Patwari/I.O. taken the burned clothes (Petticoat and Dhoti) of injured Rameshwari Devi in his possession and prepared a Fard, i.e Ex.Ka-4. The I.O. also inspected the place of occurrence and prepared a site plan i.e. Ex.Ka-5. he has also recovered a plastic gallon from the place of occurrence and prepared a Fard i.e. Ex.Ka-6. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation, he submitted the charge sheet against the appellant Anand Singh u/s 307/336/504/506 IPC on 19.3.1991, i.e. Ex.Ka-7.

3 Learned Chief Judicial Magistrate, Pauri Garhwal has committed the case to the court of Sessions on 1.4.1991 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. On 10.05.1991, Sessions Judge, Pauri Garhwal framed the charge against the appellant Anand Singh u/s 307/337/506 of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined P.W. 1 Smt. Rameshwari Devi, injured winess, P.W.2 Amar Singh, eyewitness, P.W.3 Ganeshi Devi, who is also an eyewitness, P.W.4 Mahavir Singh, complainant of the case, P.W.5 Dinesh Chandra Pokhariyal, Patwari/I.O. of the case and P.W.6 Dr. Atul

Kumar, Medical Officer who has medically examined the injuries of Smt. Rameshwari Devi.

6. Thereafter, the statement of the appellant-Anand Singh was recorded u/s 313 of Cr.P.C. who denied the allegations made against him. However, he had not produced any oral or documentary evidence.

7. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Pauri Garhwal vide his judgment and order dated 24.02.1992 convicted the appellant-Anand Singh under Section 324 of IPC and sentenced him for two years R.I. Against the said judgment and order dated 24.2.1992, the appellant has preferred the present appeal.

8. I have heard Sri M.C. Kandpal, Sr. Advocate assisted by Sri S.S. Chaudhary, learned counsel for the appellant and Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W.1 Smt. Rameshwari Devi who has stated in her statement that appellant-Anand Singh belonged to her village. In her village there is an organization named Mahila Mangal Dal and she is the president of that organization. The appellant-Anand Singh used to manufacture illicit liquor in his house and being a president she had asked him not to manufacture the illicit liquor. On 9.3.1991 she was holding a meeting in Panchayat Chowk and meanwhile appellant gave a call from his house and challenged that he is manufacturing the illicit liquor and who has the courage to stop him and he was also abusing. Then about 10:00 P.M in the night she had gone to the house of appellant and thereafter appellant dragged her in his courtyard and sprinkled the kerosene oil on her and also set the fire. The appellant also threatened her for her life due to which her clothes were burned and she received the injuries on her hands and foots. Meanwhile other ladies also reached on the place occurrence viz. Chandra

Devi, Duba Devi, Puja Devi and Savitri Devi and they extinguished the fire from her body. After that Amar Singh also came over there and after that she was taken to her house and thereafter she changed her clothes and had gone to Patwari Chowki and then to Pavo Hospital. On the next day, she was referred to Pauri Hospital. She had identified that Dhoti and Peticoat which she was wearing at the time of incident and they were exhibited as Ex. 1 and 2 and she had also identified the plastic gallon in which kerosene oil was there. She has further stated that the report of this incident was lodged in the Patwari Chowki. This witness was cross-examined at length by the defence counsel but nothing has come out in her statement which may create any doubt in her evidence. The evidence of this witness is trustworthy, believable and reliable.

10. P.W.2 is Amar Singh who has stated in his statement that appellant-Anand Singh was known to him and belonged to his village and in his village there is an organization namely Mahila Mangal Dal and Smt. Rameshwari Devi was the president of that organization. On 9.3.1991 the time was about 10:00 P.M., the ladies of that organization reached at the house of appellant Anand Singh because appellant was abusing them and he was asking that who has the courage to stop manufacturing of the illicit liquor in his house. The appellant in his courtyard sprinkled the kerosene oil on Rameshwari Devi and set her at fire. He had also reached on the place of occurrence after hearing the noise and he saw that the ladies viz. Savitri Devi, Chandra Devi, Ganeshi Devi and other ladies were trying to extinguish the fire form the body of Rameshwari Devi. There were burn injuries on the hands and foots of Rameshwari Devi and her clothes were also burned. Thereafter, Rameshwari Devi was taken to her house where she had changed her clothes and after that she was taken Panchayat Chowk and thereafter she was taken to Pavo Hospital. He has also stated that Mahavir Singh was informed about this incident by Rameshwari Devi and other ladies as well as by him and on the basis of this information Mahavir Singh

had written the report and after he had given the report to the patwari, He has also stated that he had reached to the Patwari Chowki at 5:00 A.M. this witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his evidence. The evidence of this witness is also trustworthy, believable and reliable.

11. P.W.3 is Ganeshi Devi who has stated in her statement that appellant-Anand Singh was belonged to her village and he was manufacturing illicit liquor and in her village there is an organization namely Mahila Mangal Dal And Smt. Rameshwari Devi was the president of that organization and she and other ladies are the member of that organization. Mahila Mangal Dal had asked the appellant not to manufacture the illicit liquor. For that appellant got annoyed and was abusing the ladies of Mahila Mangal Dal. The incident was said to be taken place six months' before on 9th March at 10:00 P.M. when the appellant was abusing and the ladies of that organization came in the Panchayat Chowk. Then the ladies from the Mahila Mangal Dal started towards the house of the appellant and then the appellant dragged Rameshwari Devi in the courtyard and sprinkled kerosene oil on her and also set her at fire. She along with other ladies also reached on the place of occurrence and other 10-12 ladies had also reached there after hearing the cries of Rameshwari Devi and all these ladies had extinguished the fire from her body. Thereafter Amar Singh also reached on the place of occurrence after hearing the noise and due to this Rameshwari Devi had received injuries on her hands and foots and her hairs were also burned. Then Rameshwari Devi was taken to her house where she had changed her clothes and she was taken to Panchayat Chowk and thereafter she was taken to Pavo Hospital. In the Panchayat Chowk, she along with Rameshwari Devi narrated the incident to Mahavir Singh. This witness was also cross-examined at length by the defence counsel but nothing has come out in her statement which may create any doubt in her

evidence. The evidence of this witness is also believable and reliable.

12 P.W.4 is Mahavir Singh who has stated in his statement that appellant-Anand Singh belonged to his village and in his village there is an organization namely Mahila Mangal Dal and Smt. Rameshwari Devi was the president of that organization. Appellant Anand Singh was doing the business of manufacturing the illicit liquor. On 19.2.1991 Mahila Mangal Dal had recovered the illicit liquor from the house of appellant and due to this appellant had enmity with the ladies of Mahila Mangal Dal. On 9.3.1991, the time was about 9:30 P.M., the appellant was abusing Mahila Mangal Dal from his house and was giving the challenge that who has the courage to stop him in manufacturing illicit liquor. Then the ladies from the Mahila Mangal Dal reached in the house of the appellant and then he heard that appellant had set Rameshwari Devi at fire. Then he along with some other persons reached on the place of occurrence where the ladies informed him that appellant had sprinkled kerosene oil on Rameshwari Devi and also set her body and clothes at fire. After that Rameshwari Devi was taken to her house where she changed her clothes and thereafter she was taken to Primary Health Centre, Pavo. After that the report was given to the Patwari i.e. Ex.Ka-1. This witness was also cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his evidence. The evidence of this witness is also reliable, believable and reliable.

13. P.W.5 is Dinesh Chandra Pokhariyal, Patwari/I.O. of the case who has stated in his statement that on 10.3.1991 he was posted as Patwari in the said Chowki. On that day Mahavir Singh had given a report Ex.Ka-1 and on the basis of that report he had prepared the Chik FIR i.e. Ex.Ka-3. The entry was also made in the G.D. i.e. Ex.Ka-3. On the same day i.e. on 10.3.1991 he started the investigation and on the same day he had arrested

the appellant-Anand Singh. He has taken the burned clothes of Rameshwari Devi into possession and prepared a Fard i.e. Ex.Ka-4. During the course of investigation, he had recorded the statements of the witnesses and prepared the site plan of the place of occurrence i.e. Ex.Ka-5. He also recovered the plastic gallon and also prepared a Fard in this regard i.e. Ex.Ka-6. After completing the investigation, on 19.3.1991 he submitted the charge sheet in the court i.e. Ex.Ka-7

14. P.W.6 is Dr. Atul Kumar who has stated in his statement that on 10.3.1991 he was posted as Medical Officer, he had examined Smt. Rameshwari Devi and he found following injuries on her body:-

1. *Right leg burnt 8% with vesication 2nd degree of burn.*
2. *Left leg burnt 1% with vesication 2nd degree of burn*
3. *Right middle finger and index finger burnt 1/2% with vesication.*

He has also stated that in his opinion the injuries could be caused by fire and these injuries could be caused within 5 hours. The injuries could be caused on 9.3.1991 at about 10:00 P.M. He had also prepared the injury report at the time of medical examination, i.e. Ex.Ka-8.

15. After that the statement of the appellant- Anand Singh was recorded u/s 313 Cr.P.C. who had denied the allegations made against him. However, he had not produced any oral or documentary evidence in his defence.

16. Sri M.C. Kandpal, learned senior counsel for the appellant submitted that the conviction of the appellant passed u/s 324 IPC is correct and justified as per the evidence recorded by the trial court and he also does not want to challenge the same and he only prayed the sentence awarded to the appellant by the trial court may be reduced to the sentence already undergone by him.

17. From the evidence discussed above, it is proved from the statement of P.W.1 Smt. Rameshwari Devi that she was the

president of Mahila Mangal Dal of Village Ghurdausyun, Distt. Pauri Garhwal and that organization recovered the illicit liquor from the house of the present appellant on 19.2.1991. On 9.3.1991 when the ladies of the Mahila Mangal Dal were holding a meeting in the Panchayat Chowk then the present appellant had challenged them that who has the courage to stop him in making illicit liquor and also abused them from his house. When Smt. Rameshwari Devi along with other ladies reached in the way in front of the house of the appellant, then she was dragged by the appellant in the courtyard of his house. After that the appellant sprinkled kerosene oil from the plastic gallon on her and also set her at fire due to which she received injuries on her hands and foots and her Petticoat and Dhoti were burned. The said plastic gallon was also recovered by the I.O. from the place of occurrence and a Fard was also prepared by i.e. Ex.Ka-6 in this regard. P.W.2 Amar Singh, eyewitness of the incident has stated in his statement that appellant in the courtyard of his house, sprinkled the kerosene oil on injured Rameshwari Devi and also set her at fire. There were burn injuries also on the hands and foots of Rameshwari Devi and her clothes were also burned. P.W.3 Ganeshi Devi, who is also an eyewitness of the incident has also stated in her statement that when the ladies from the Mahila Mangal Dal reached in the house of the appellant, then the appellant dragged Rameshwari Devi in the courtyard of his house and sprinkled kerosene oil on her and also set her at fire. She also reached on the place of occurrence and other 10-12 ladies had also reached there after hearing the cries of Rameshwari Devi and all these ladies had extinguished the fire from her body and due to this Rameshwari Devi had received injuries on her hands and foots. The injuries on the person of Rameshwari Devi are also corroborated by the statement of P.W.6. Dr. Atul Kumar as well from the injury report i.e. Ex.Ka-8. The statement of injured Rameshwari Devi is also supported by the statements of P.W.2 Amar Singh and P.W.3 Ganeshi Devi who are the eyewitnesses of the said incident and

her statement is also corroborated by the statement of P.W.6 Dr. Atul Kumar.

18. Thus, in this way the prosecution is successful in proving its case against the appellant u/s 324 IPC and it is well proved that the said incident was happened like so as has been narrated by the prosecution.

19. Sri M.C. Kandpal, learned senior counsel for the appellant submitted that the sentence of 2 years R.I. as awarded by learned trial court is too severe and it may be reduced. He further submitted that the appellant in 56 years of age and he is a married man and having children also and after the aforesaid offence, he has not committed any offence and this was his first offence in his life and now the period of 16 years have been elapsed after the incident. He has further submitted that the injuries on the person of Rameshwari Devi are simple in nature and not on the vital part and they are only simply on the hands and foots. He further submitted that the appellant remained in jail from 10.3.1991 to 11.12.1991 that is for a period of nine months and this point is also conceded by Sri M.A. Khan, learned brief holder for the State. For this reason, learned senior counsel submitted that the appellant may be released with the sentence already undergone by him.

20 After considering the entire facts and circumstances of the case, this Court is of the view that it would be just and proper to reduce the sentence of the appellant to the sentence already undergone by him i.e. nine months.

21. For the reasons recorded above, the appeal is partly allowed. The conviction part of the appellant-Anand Singh under Section 324 I.P.C. is hereby confirmed. However, his sentence of two years R.I. as awarded by learned Sessions Judge, Pauri Garhwal is hereby reduced to nine months which has already been undergone by the appellant.

(Dharam Veer, J.)

Rajeev Dang